

**MINUTES OF THE
SENATE JUDICIAL CONFIRMATION COMMITTEE**
Thursday, January 7, 2010 – 11:00 a.m. – Room 450 State Capitol

Members Present:

Sen. Scott K. Jenkins, Chair
Sen. Jon J. Greiner
Sen. Lyle W. Hillyard
President Michael G. Waddoups

Members Absent:

Sen. Karen Mayne

Staff Present:

Ms. Esther D. Chelsea-McCarty, Associate General Counsel
Mr. Jerry D. Howe, Policy Analyst
Ms. Amanda K. Majers, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Jenkins called the meeting to order at 11:04 p.m. The Committee introduced themselves to the candidate and the audience. The candidate introduced his family, friends, and colleagues to the Committee.

MOTION: Sen. Greiner moved to close the meeting for the purpose of discussing the character, professional competence, or physical or mental health of Mr. Keith A. Kelly. The motion passed unanimously.

MOTION: Sen. Hillyard moved to open the meeting. The motion passed unanimously.

2. Interview of Mr. Keith A. Kelly

Mr. Kelly was placed under oath by Mr. Howe. Mr. Kelly thanked the judicial nominating committee and the governor for selecting him as a judicial candidate. He related his personal and professional background to the Committee. He explained the judicial temperament he hopes to achieve. Mr. Kelly highlighted his community service and pro bono work. He stated that his interest in becoming a judge derives from his belief and enjoyment in serving the community through judicial service. Mr. Kelly explained his judicial philosophy that power should be used in a measured way to resolve a dispute. He stated that he rejects the idea of judicial activism, as it steps away from his judicial philosophy.

Sen. Greiner inquired about Mr. Kelly's resume and his law clerk experience. Mr. Kelly stated that in 1983 he worked for Ray Quinney & Nebeker, in 1984 he split the summer clerking for two law firms, Hogan & Hartson and Lewis & Roca, and then the following summer he worked for Fennimore Craig.

Sen. Greiner noted Mr. Kelly's appointment to the Guardian ad Litem and asked if he has had any experience with the Children's Justice Center. Mr. Kelly responded that he has not dealt with the Children's Justice Center, but he explained that as a judge he would appreciate the support that center provides for child witnesses and victims.

Sen. Greiner asked how Mr. Kelly's experience in civil litigation will affect his perception of District Court cases. Mr. Kelly stated that his pro bono work has rounded out his court experience in the areas of family law and domestic violence. He stated that a judge needs to have respect for the litigants in order to impartially hear their case.

Sen. Greiner asked about the possible evolution of policy governing protective orders for those under the age of 18 for dating violence. Mr. Kelly stated that as a judge he will apply the law as the Legislature creates it whether it is to broaden the protection or not.

Sen. Hillyard inquired how Mr. Kelly will deal with his current law firm being unable to appear before him in court. Mr. Kelly stated that for the near future he will not take cases dealing with his law firm.

Sen. Hillyard also inquired how Mr. Kelly and his family will deal with the financial loss that will occur if he becomes a judge. Mr. Kelly stated that his family has talked about it, and they are prepared for that circumstance.

Sen. Hillyard asked how Mr. Kelly will deal with pro se litigants and how he will handle court room decorum. Mr. Kelly stated that he believes the court should be open and accessible even if it creates more work for a judge. He explained that a judge should respect the litigants and be impartial, and asserted he would aspire to that goal.

Sen. Hillyard inquired how Mr. Kelly could alleviate judicial expenses. Mr. Kelly stated that a judge can most effectively control costs by controlling the court docket and having reasonable limits on discovery, but conversely judges need to be careful about micro-managing cases. Sen. Hillyard suggested controlling costs by utilizing various media technology.

Sen. Hillyard asked if Mr. Kelly has any concerns with applying the death penalty. Mr. Kelly responded that it is a weighty issue, but he will apply the law under the circumstances detailed in statute.

President Waddoups asked about access to the courts and the modified fee schedule imposed during the 2009 General Session. Mr. Kelly stated that fee schedules are a policy decision but recommended imposing higher fees for higher dollar value cases and also examining the threshold value in small claims court to allow those cases to be dealt with as inexpensively as possible.

President Waddoups inquired if there is anything in Mr. Kelly's past that would reflect negatively upon the judiciary and the state. Mr. Kelly stated that there is not.

Chair Jenkins expressed admiration that Mr. Kelly applied for this position considering what he will be giving up in terms of his private legal practice. Chair Jenkins also wished him well and stated that with his knowledge and background he will be an asset to the court.

MOTION: Sen. Hillyard moved to recommend favorably to the full Senate that Mr. Kelly be confirmed as a judge in the Third District Court. The motion passed unanimously.

3. Other Items / Adjourn

MOTION: Sen. Hillyard moved to adjourn. The motion passed unanimously.

Chair Jenkins adjourned the meeting at 12:11 p.m.